

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JAMESETTA BERNOUDY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. 2:15-01286-MMD-PAL

**ORDER**

(IFP App – Dkt. #1)

Plaintiff Jamesetta Bernoudy has submitted an Application to Proceed *In Forma Pauperis* (Dkt. #1) pursuant to 28 U.S.C. § 1915 along with a Complaint (Dkt. #1-1). This matter is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 and 1-9 of the Local Rules of Practice.

**I. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

Plaintiff's Application includes the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted. The Court will now review Plaintiff's Complaint.

**II. SCREENING THE COMPLAINT**

After granting a request to proceed *in forma pauperis*, a federal court must additionally screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) "applies to all *in forma pauperis* complaints"). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil Procedure applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). For purposes of 28 U.S.C. § 1915's screening requirement, a

1 properly pled complaint must therefore provide “a short and plain statement of the claim  
2 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic*  
3 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual  
4 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
5 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A  
6 complaint “must contain sufficient allegations of underlying facts to give fair notice and to  
7 enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th  
8 Cir. 2011).

9 Federal courts are given the authority dismiss a case if the action is legally “frivolous or  
10 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from  
11 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The standard for  
12 determining whether a plaintiff has failed to state a claim upon which relief can be granted under  
13 § 1915 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a  
14 claim. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is  
15 essentially a ruling on a question of law. *North Star Intern. v. Ariz. Corp. Comm’n*, 720 F.2d  
16 578, 580 (9th Cir. 1983). In considering whether a plaintiff states a valid claim, the court accepts  
17 as true all material allegations in the complaint and construes them in the light most favorable to  
18 the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court dismisses  
19 a complaint pursuant to § 1915(e), a plaintiff is ordinarily given leave to amend with directions  
20 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies  
21 could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

22 Here, Plaintiff’s Complaint challenges a decision by the Social Security Administration  
23 (“SSA”) denying Plaintiff Supplemental Security Income Disability Insurance Benefits and  
24 under Title XVI of the Social Security Act. *See* Compl. ¶ 3. To state a valid benefits claim, a  
25 complaint must give the defendant fair notice of what the plaintiff’s claim is and the grounds  
26 upon which it rests. *See Starr*, 652 F.3d at 1216. To do so, the complaint should state when and  
27 how she exhausted her administrative remedies with the SSA and the nature of Plaintiff’s  
28

1 disability, including when Plaintiff claims she became disabled. The complaint should also  
2 contain a short and concise statement identifying the nature of Plaintiff's disagreement with the  
3 SSA's determination and show that Plaintiff is entitled to relief. Although this showing need not  
4 be made in great detail, it must be presented in sufficient detail for the court to understand the  
5 disputed issues so that it can meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. §  
6 56:4 (2015).

7 **A. Exhaustion of Administrative Remedies**

8 Before Plaintiff can sue the SSA in federal court, she must exhaust her administrative  
9 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)  
10 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been  
11 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
12 claim"). Generally, if the SSA denies a claimant's application for disability benefits, he can  
13 request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant  
14 may request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the  
15 claim, a claimant may request review of the decision by the Appeals Council. If the Appeals  
16 Council declines to review the ALJ's decision, a claimant may then request review by the United  
17 States District Court. *See* 20 C.F.R. §§ 404, 416. Plaintiff alleges that on May 15, 2015, the  
18 Appeals Council denied Plaintiff's request for review, and the ALJ's decision became the final  
19 decision of the Commissioner. *See* Compl. ¶ 8. Thus, it appears Plaintiff has exhausted her  
20 administrative remedies.

21 Once Plaintiff has exhausted her administrative remedies, she can obtain review of an  
22 SSA decision denying benefits by commencing a civil action within 60 days after notice of a  
23 final decision. *See* 20 C.F.R. §§ 404, 416. An action for judicial review of a determination by  
24 the SSA must be brought in a District Court of the United States for the judicial district in which  
25 the Plaintiff resides. *Id.* Here, the Complaint demonstrates that Plaintiff timely commenced this  
26 action and she resides within the District of Nevada. *See* Compl. ¶ 1.

1           **B.       Grounds for Plaintiff's Appeal and the Nature of Plaintiff's Disability**

2           Plaintiff's Complaint seeks judicial review of the Commissioner's decision denying  
3 benefits and asks the Court to reverse that decision, or alternatively, to remand this matter for a  
4 new hearing. A district court can affirm, modify, reverse, or remand a decision if Plaintiff has  
5 exhausted his administrative remedies and timely filed a civil action. However, judicial review  
6 of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is  
7 substantial evidence in the record as a whole to support the findings of the Commissioner; and  
8 (b) whether the correct legal standards were applied. *Morgan v. Comm'r Soc. Sec. Admin.*, 169  
9 F.3d 595, 599 (9th Cir. 1999).

10          In her Complaint, Plaintiff contends there is not substantial medical or vocational  
11 evidence in the record to support: (a) the legal conclusion she is not disabled within the meaning  
12 of the Social Security Act; or (b) the Commissioner's finding that Plaintiff could perform  
13 substantial gainful activity. *See* Compl. ¶ 9. Plaintiff asserts that the record supports a finding  
14 that she is disabled and has been continuously disabled at all relevant times. *Id.* ¶ 9(c). Plaintiff  
15 also alleges new evidence exists that warrants a remand of this matter for further proceedings.  
16 *Id.* ¶ 9(d).

17          However, Plaintiff has not stated the nature of her disability or alleged when it  
18 commenced, instead alleging only Plaintiff "is, and at all times relevant to this action, disabled as  
19 that term is defined in the Social Security Act." *Id.* ¶ 9 Rule 8's pleading standard requires more  
20 than a "formulaic recitation of the elements of a cause of action" and more than "labels and  
21 conclusions." *Iqbal*, 556 U.S. at 678. A complaint merely stating that the SSA's decision was  
22 wrong and failing to describe plaintiff's disability is insufficient to satisfy Rule 8's pleading  
23 requirement. Accordingly, Plaintiff's Complaint fails to state a claim upon which relief can be  
24 granted.

25          Based on the foregoing,

26          **IT IS ORDERED:**  
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- Dated this 9th day of October, 2015.

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